

Bill No. 22-09
Concerning: Enforcement of County
Laws - Notice of Violation - Appeals
Revised: 4-28-09 Draft No. 4
Introduced: May 5, 2009
Expires: November 5, 2010
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) authorize an enforcement agency to issue a notice of violation to enforce certain County laws;
- (2) limit the jurisdiction of the Board of Appeals regarding certain enforcement actions taken by certain enforcement agencies;
- (3) clarify when certain appeals may be taken and remove the right to appeal certain orders and decisions;
- (4) make technical corrections and repeal obsolete provisions of law; and
- (5) generally amend County law regarding enforcement.

By amending

Montgomery County Code
Chapter 1. General Provisions
Section 1-18
Chapter 2. Administration
Sections 2-112 and 2-114
Chapter 2A, Administrative Procedures Act
Section 2A-11
Chapter 8. Buildings
Sections 8-22 and 8-23
Chapter 19. Erosion, Sediment Control and Storm Water Management
Sections 19-9 and 19-12
Chapter 22. Fire Safety Code
Sections 22-3, 22-14, 22-18, and 22-27
Chapter 48. Solid Waste
Sections 48-26, 48-27, and 48-28
Chapter 49. Streets and Roads
Section 49-9

By repealing

Montgomery County Code
Chapter 22. Fire Safety Code
Section 22-21
Chapter 58. Weeds
Section 58-6

Boldface

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 1-18, 2-112, 2-114, 2A-11, 8-22, 8-23, 19-9, 19-12, 22-3, 22-14, 22-18, 22-27, 48-26, 48-27, 48-28, 49-9, are amended and Sections 22-21 and 58-6 are repealed as follows:

1-18. Enforcement procedures.

* * *

(f) Notice of Violation.

- (1) An enforcement officer may issue a notice of violation before issuing a citation.
- (2) A notice of violation must:
 - (A) be in writing;
 - (B) describe in general terms a remedial action which, if taken, will achieve compliance with County law;
 - (C) specify a reasonable time to perform any required remedial action; and
 - (D) inform the recipient that noncompliance with the required remedial action is likely to result in the issuance of a civil or criminal citation under subsection (b)(1) which the enforcement agency can enforce in a court with jurisdiction.
- (3) This subsection does not prevent an enforcement officer from:
 - (A) issuing a citation at any time, including after an enforcement officer has issued a notice of violation under which time remains for remedial action to be taken; or
 - (B) pursuing any remedy under Section 1-20.
- (4) A person may not appeal to the Board of Appeals a decision by an enforcement officer to issue or decline to issue a notice of violation under this subsection.

(5) This subsection does not apply if another County law expressly allows an enforcement officer to issue a notice of violation or warning before a citation is issued.

2-112. Jurisdiction.

* * *

(c) The Board has the following appellate jurisdiction.

The [board] Board must hear and decide each appeal taken under:	Those appeals involve:
* * *	
[Section 22-21	Fire safety orders]
	* * *
[Chapter 27A	Individual water supply and sewage disposal systems]
* * *	
Section 48-28	[Removal of solid waste and weeds] <u>Permits and licensing</u>
[Section 49-16	Removal of obstructions to vision along highways]
<u>Section 49-35</u>	<u>Permits for grading and construction</u>
<u>Section 49-36</u>	<u>Permit conditions and procedures</u>
[Section 49-39A	Grading and construction of roads, sidewalks, and curbs]
	* * *
[Section 58-6	Weed removal]
Chapter 59	Special exceptions decided by Hearing Examiner

* * *

2-114. Appeals from decisions.

[Any decision by the county board of appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the board and a party to the proceeding before it, to the circuit court for the county which shall have power to affirm the decision of the board, or if such decision is not in accordance with law, to modify or reverse such decision, with or without remanding the case for rehearing as justice may require. Whenever any such appeal is taken a copy thereof shall be served on the board by the clerk of the court and the board shall promptly give notice of the appeal to all parties to the proceeding before it and shall, within the time limit prescribed by the Maryland Rules of Procedure, file with the court the originals or certified copies of all papers and evidence presented to the board in the proceeding before it, together with a copy of its opinion which shall include a statement of the facts found and the grounds for its decision. Any party to the proceeding in the circuit court aggrieved by the decision of the court may appeal from such decision to the court of appeals within thirty (30) days from the date thereof. The review proceedings provided by this section shall be exclusive.]

(a) If a party in a matter adjudicated by the Board of Appeals is aggrieved by a final decision of the Board in the matter, the party may seek judicial review of the decision in the Circuit Court under the applicable Maryland Rules of Procedure governing judicial review of administrative agency decisions. A party aggrieved by the decision of the Circuit Court may appeal that decision to the Court of Special Appeals.

(b) Unless the court reviewing the Board's decision orders a stay, the decision remains in effect pending a final decision of the court.

2A-11. Judicial review.

[Any party aggrieved by a final decision in a case governed by this article, whether such decision is affirmative or negative in form, may appeal said decision to the circuit court for Montgomery County, Maryland, in accord with the provisions of the Maryland Rules of Procedure governing administrative appeals. Said court shall have the power to affirm, reverse or modify the decision or remand the case for further proceedings as justice may require. The filing of such appeal shall not stay the order of the hearing authority. Any party to the proceeding in the circuit court may appeal from such decision to the appellate courts of Maryland pursuant to applicable provisions of the Maryland Rules of Procedure.]

(a) A party aggrieved by a final decision in a case governed by this Article may seek judicial review of the decision in the Circuit Court under the applicable Maryland Rules of Procedure governing judicial review of administrative agency decisions. A party aggrieved by the decision of the Circuit Court may appeal that decision to the Court of Special Appeals.

(b) Unless the court reviewing the decision of the hearing authority orders a stay, the hearing authority's decision remains in effect pending a final decision of the court.

8-22. Violations.

[(a) *Notice of violation.* The director shall serve a notice or order on the person responsible for the erection, construction, alteration, extension, repair, use or occupancy of a building or structure in violation of the provisions of this chapter or any other applicable federal, state or local law or regulation or in violation of a detail statement or a plan approved thereunder or in violation of a permit or certificate issued under the provisions of this chapter; and such order shall direct the

discontinuance of the illegal action or condition and the abatement of the violation.]

[(b) *Prosecution of violation.* If the violation cited in the notice or order is not abated within the period set forth in said notice or order, the director may institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation or to require the removal or termination of the unlawful use of the building or structure in violation of the provisions of this chapter or of the order or direction made pursuant thereto.]

[(c) *Violation penalties.* Any person who violates a provision of this chapter or fails to comply with any of the requirements thereof or who erects, constructs, alters or repairs a building or structure in violation of an approved plan or who refuses, ignores or violates an order of the director or a condition of permit or certificate issued under the provisions of this chapter shall be subject to punishment for a class A violation as set forth in section 1-19 of chapter 1 of the County Code. Each day a violation continues to exist shall constitute a separate offense.]

A person has committed a class A violation if the person violates any provision of this Chapter, including:

(a) building, altering, or repairing a building or structure in violation of an approved plan; or

(b) violating an order of the Director or any condition of an approved plan, permit, or certificate issued under this Chapter.

8-23 [Board of appeals] Appeals.

(a) Any person aggrieved by the issuance, denial, renewal, or revocation of a permit [or any other decision or order of the Department] under this

Chapter may appeal to the County Board of Appeals within 30 days after the permit is issued, denied, renewed, or revoked[, or the order or decision is issued]. A person may not appeal any other order of the Department, including a decision to issue or rescind a stop work order.

(b) After notice and hearing, the Board may affirm, remand, modify, or reverse the [order or decision] action of the Department.

(c) Any party may appeal a decision of the Board to the Circuit Court under Section 2-114.

19-9. Permit revocation or suspension; stop work order.

* * *

(f) This Section [must not be interpreted as restricting] does not restrict the Department from proceeding directly with any available alternative enforcement procedures under [section 19-19 of this chapter] Section 19-69.

* * *

19-12. Inspections.

* * *

(h) This Section does not restrict the Department from proceeding directly with any available alternative enforcement procedure under Section 19-69.

22-3. Construction and scope of Chapter.

* * *

(e) [Nothing in this chapter shall be construed as rendering] This Chapter does not render any other applicable [laws] law or regulation invalid. [In any situation where] If a conflict [exists] arises between [a provision of] this [chapter] Chapter and another [code] law or regulation, the fire marshal and [appropriate] the head of the agency

responsible for enforcing the conflicting [code shall determine in concert] law or regulation must agree which [provisions shall apply] applies. [Conflicts which are unreconcilable shall] If they cannot agree, any remaining conflict must be referred to the [director of the department of fire and rescue services] Fire Chief. The decision of the [director of fire and rescue services] Fire Chief in any matter relating to fire safety [shall be] is final[, except that any person aggrieved by such decision shall have the right to appeal to the county board of appeals in accordance with chapter 2 of the County Code]. Within [thirty (30)] 30 days [following the discovery of] after any [serious] remaining conflict has been resolved, the [director] Fire Chief and the head of the agency responsible for enforcing the conflicting [code shall] law or regulation must forward to the [county executive] County Executive a joint [recommendations for the removal of] proposal to amend a law or regulation to eliminate the conflict [from the County Code or the regulations adopted pursuant thereto].

22-14. [Standards adopted] National standards.

[The following codes, standards and model laws, published by the National Fire Protection Association, International, 470 Atlantic Avenue, Boston, Massachusetts 02210, in Volumes 1-10 and Volume 16 of the sixteen-volume set of National Fire Codes, are adopted in their entirety in these regulations except as herein set forth. The text of these adopted codes, standards and model laws shall be fully enforceable as other regulations adopted under the provisions of this chapter as if the same were incorporated and set forth at length therein. The dates or additions of the individual codes and standards shall be as listed in the National Fire Codes of the National Fire Protection Association, more specifically, the 1978 edition thereof. The codes, standards and model laws adopted pursuant to these

168 regulations shall not waive any provision of this chapter nor be less restrictive than
 169 its provisions.

<u>NFPA No.</u>	<u>Code Standards</u>
32	Standard for Drycleaning Plants
88A	Standard for Parking Structures
88B	Standard for Repair Garages
101	Code for Life Safety from Fire in Building and Structures
102	Standard for Tents, Grandstands and Air-Supported Structures Used for Places of Assembly
501A	Standards for Installation of Mobile Homes
1122L	Code for Unmanned Rockets
<u>NFPA No.</u>	<u>Engineering Practice Standards Flammable and Combustible Liquids</u>
30	Flammable and Combustible Liquids Code
321	Standard on Basic Classification of Flammable and Combustible Liquids
327	Standard Procedures for Cleaning and Safeguarding Small Tanks and Containers
385	Recommended Regulatory Standards for Tank Vehicles for Flammable and Combustible Liquids
386	Standard for Portable Shipping Tanks
<u>NFPA No.</u>	<u>Flammable Gasses</u>
50	Standard for Bulk Oxygen Systems at Consumer Sites
50A	Standard for Gaseous Hydrogen Systems at Consumer Sites
50B	Standard for Liquefied Hydrogen Systems at Consumer Sites

56A	Standard for the Use of Inhalation Anesthetics (Flammable and Nonflammable)
56B	Standard for Inhalation Therapy
56D	Standard for Hyperbaric Facilities
56E	Standard for Hypobaric Facilities
56F	Standard for Nonflammable Medical Gas Systems
58	Standard for Storage and Handling of Liquefied Petroleum Gases
59	Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants
59A	Standard for the Production, Storage and Handling of Liquefied Natural Gas (LNG)
<u>NFPA No.</u>	<u>Hazardous Materials and Processes</u>
33	Standard for Spray Finishing Using Flammable and Combustible Materials
34	Standard for Dip Tanks Containing Flammable or Combustible Liquids
35	Standard for the Manufacture of Organic Coatings
<u>NFPA No.</u>	<u>Hazardous Materials and Processes</u>
40	Standard for the Storage and Handling of Cellulose Nitrate Motion Picture Film
40E	Code for the Storage of Pyroxylin Plastic
43A	Code for the Storage of Liquid and Solid Oxidizing Materials
43C	Code for the Storage of Gaseous Oxidizing Materials
43D	Code for the Storage of Pesticides in Portable Containers
51	Standard for the Installation and Operation of Oxygen Fuel Gas Systems for Welding and Cutting
51B	Standard for Fire Prevention in Use of Cutting and Welding Processes

56C	Safety Standard for Hospital Laboratories
57	Standard for Fumigation
490	Code for the Storage of Ammonium Nitrate
495	Code for the Manufacturing, Transportation, Storage and Use of Explosive Materials
654	Standard for the Prevention of Dust Explosions in the Plastics Industry
<u>NFPA No.</u>	<u>Transportation</u>
407	Standard for Aircraft Fuel Servicing
505	Standard for Type Designations, Areas of Use, Maintenance and Operation of Powered Industrial Trucks
<u>NFPA No.</u>	<u>Fire Extinguishing Systems</u>
11	Standard for Foam Extinguishing Systems
11A	Standard for High Expansion Foam Systems (Expansion Ratios from 100:1 to 1000:1)
11B	Standard on Synthetic Foam and Combined Agent Systems
12	Standard on Carbon Dioxide Extinguishing Systems
12A	Standard on Halogenated Fire Extinguishing Agent Systems – Halon 1301
<u>NFPA No.</u>	<u>Fire Extinguishing Systems</u>
12B	Standard on Halogenated Fire Extinguishing Agent Systems – Halon 1211
13	Standard for the Installation of Sprinkler Systems
14	Standard for the Installation of Standpipes and Hose Systems
15	Standard for Water Spray Fixed Systems for Fire Protection

16	Standard for the Installation of Foam-Water Sprinkler Systems and Foam-Water Spray Systems
17	Standard for Dry Chemical Extinguishing Systems
20	Standard for Installation of Centrifugal Fire Pumps
24	Standard for Outside Protection
75	Standard for the Protection of Electronic Commuter/Data Processing Equipment
<u>NFPA No.</u>	<u>Portable Fire Extinguishers</u>
10	Standard for the Installation of Portable Fire Extinguishers
<u>NFPA No.</u>	<u>Fire Warning Systems</u>
71	Standard for the Installation, Maintenance and Use of Central Station Protective Signaling Systems for Guard, Fire Alarm and Supervisory Service
72A	Standard on Installation, Maintenance and Use of Local Protective Signaling Systems for Watchmen, Fire Alarm and Supervisory Service
72B	Standard for the Installation, Maintenance and Use of Auxiliary Protective Signaling Systems for Fire Alarm Service
72C	Standard for the Installation, Maintenance and Use of Remote Station Protective Signaling Systems
<u>NFPA No.</u>	<u>Fire Warning Systems</u>
72D	Standard for the Installation, Maintenance and Use of Proprietary Protective Signaling Systems for Watchmen, Fire Alarm and Supervisory Service
72E	Standard for Automatic Fire Detectors
74	Standard for the Installation, Maintenance and Use of Household Fire Warning Equipment

<u>NFPA No.</u>	<u>Storage</u>
81	Standard for Fur Storage, Fumigation and Cleaning
231	Standard for Indoor General Storage
231B	Standard for Storage of Cellular Rubber and Plastic Materials
231C	Standard for Rack Storage of Materials
232	Standard for the Protection of Records
<u>NFPA No.</u>	<u>Building Construction and Facilities</u>
31	Standard for Oil Burning Equipment
37	Standard for Stationary Combustion Engines and Gas Turbines
54	National Fuel Gas Code
80	Standard for Fire Doors and Windows
82	Standard for Rubbish Handling and Incinerators
86A	Standard for Ovens and Furnaces, Design, Location and Equipment
86B	Standard for Industrial Furnaces, Design, Location and Equipment
90A	Standard for the Installation of Air Conditioning and Ventilating Systems
91	Standard for the Installation of Blower and Exhaust Systems for Dust, Stock, Vapor Removal or Conveying
96	Standard for the Installation of Equipment for the Removal of Smoke and Grease-Laden Vapors from Commercial Cooking Equipment
<u>NFPA No.</u>	<u>Building Construction and Facilities</u>
211	Standard for Chimneys, Fireplaces and Vents
241	Standard for Safeguarding Building Construction and Demolition Operations
418	Standard on Roof-Top Heliport Construction Protection]

The Fire Chief must recommend that the Executive adopt by regulation under Section 22-13 those parts of the National Fire Code as published by the National Fire Protection Association, or a comparable code published by a similar organization, that the Fire Chief finds will promote the purposes of this Chapter.

22-18. Compliance.

(a) *Generally.* [Any person who shall violate any of the provisions of this chapter; or shall fail to comply therewith; or shall permit or maintain such a violation; or shall violate or fail to comply with any order made thereunder; or shall build in violation of any details, statements, specifications or plans submitted or approved thereunder; or shall operate not in accordance with the provisions of any certificate, permit or approval issued thereunder; or who shall fail to comply with such an order as affirmed or modified by the board of appeals within the time fixed therein shall severally for each and every violation and noncompliance respectively, be guilty of a misdemeanor. The imposition of a penalty for any violation shall not excuse the violation nor shall the violation be permitted to continue. Prosecution or lack thereof of either the owner, occupant, or the person in charge shall not be deemed to relieve any of the others.] A person has committed a Class A violation if that person violates, permits a violation of, or does not comply with:

- (1) this Chapter;
- (2) an order issued under this Chapter;
- (3) any building specification or plan approved under this Chapter;
- or
- (4) any certificate, permit, or approval issued under this Chapter.

(b) *Orders or notices.* [Any order or notice issued or served as provided in this code shall be complied with by the owner, operator, occupant or other person responsible for the condition or violation to which the order or notice pertains. Every order or notice shall set forth a time limit for compliance dependent upon the hazard and danger created by the violation. In cases of extreme danger to persons or property immediate compliance shall be required. If the building or other premises is owned by one person and occupied by another, under lease or otherwise, and the order or notice requires additions or changes in the building or premises such as would immediately become real estate and be the property of the owner of the building or premises, such order or notice shall be complied with by the owner unless the owner and occupant have otherwise agreed between themselves, in which event the occupant shall comply.]

(1) Any order or notice regarding a condition or violation which must be corrected must:

(A) set a deadline for compliance that is based on the danger created by the condition or violation;

(B) be complied with by the owner and any other person responsible for the condition or violation; and

(C) require immediate compliance if the condition or violation presents an extreme danger to any person or property.

(2) If the property is occupied by a person other than the owner, the owner is responsible for compliance with the order or notice unless within 5 days after the order or notice is issued:

(A) the owner and occupant agree that the occupant will comply with the order or notice; and

(B) the owner and occupant notify the Fire Chief of this decision.

(c) *Unauthorized tag removal.* [It shall be a misdemeanor for any person or user, firm or agent to continue the use of any device or appliance which has been tagged under section 22-16(c), unless written authority to remove such tag is given by the director. Removing or mutilating the tag shall be deemed a misdemeanor.] A person has committed a Class A violation if that person:

(1) continues using any device or appliance that was tagged under Section 22-16; or

(2) removes the tag without written permission of the Fire Chief.

22-21. [Appeals] Reserved.

[(a) *From orders.* Any person aggrieved by an order issued under this chapter may appeal within the abatement period but not to exceed ten (10) days from such order to the county board of appeals pursuant to sections 2-108 to 2-116 of the County Code. Such appeal shall not stay execution of the order more than ten (10) days, unless the board of appeals shall grant further stay upon application of the person filing the appeal. No stay of execution shall be permitted for any order issued pursuant to this chapter that requires immediate compliance, unless a court of competent jurisdiction shall order such stay of execution.

(b) *Decisions of department.* Any person aggrieved by the issuance, denial, renewal or revocation of a permit, license, certificate or any other decision of the department made hereunder may appeal to the

county board of appeals, which after hearing upon notice shall have authority to affirm, modify or reverse the order or decision made.]

22-27. [Permits and certificates of approval for] Approval of fire detection systems and devices.

* * *

[(f) *Appeals.* If a certificate of approval or permit required by this Section has been denied, the applicant may appeal to the County Board of Appeals under Section 22-21.]

Chapter 48. SOLID [WASTES] WASTE (TRASH).

48-26. [Same] Permits and licenses — Fees.

* * *

48-27. [Same] Permits and licenses — Refusal to renew; revocation or suspension.

* * *

48-28. [Appeals from orders and decisions under chapter] Permits and licenses — Appeals.

[The county board of appeals shall have full authority to hear testimony and decide all appeals taken from decisions or orders of the director under this chapter.] Any person aggrieved by the issuance, denial, renewal, suspension, or revocation of a permit or license [or any other decision or order of the director made] under this Chapter may appeal to the [county board of appeals] County Board of Appeals within [ten (10)] 10 days [from such order or decision] after the action is taken. [Upon notice, after hearing, the board shall have authority to] The Board may affirm, remand, modify, or reverse the [order or decision of the director] action of the Department. [Such] An appeal [shall] to the Board must not stay [execution of] the [order] action unless the [board] Board, upon application, [shall grant] grants a stay of [such order] the action.

49-9. Removal of items that [obstruct the vision of motorists on public highways or] interfere with the use of public rights-of-way.

* * *

[(b) *Petition for hearings.* Any person aggrieved by any order issued under this Section may, within 10 days after receiving the order, petition in writing for a hearing before the Board of Appeals. Within 30 days after receiving a petition, the Board must hold a hearing. The Board may affirm, modify or rescind the order. The County must not remove any obstruction or enforce any order issued under this Section until either:

- (1) the Board has affirmed the order; or
- (2) the time to petition for a hearing has expired and no petition was filed.] Reserved.

* * *

58-6. [Appeals] Reserved.

[(a) The County Board of Appeals may hear testimony and decide all appeals of decisions or orders of the director under this chapter.]

[(b) Any person aggrieved by any decision or order of the director under this chapter may appeal to the County Board of Appeals within 10 days after the order or decision is issued.]

[(c) After notice and hearing, the board may affirm, modify, or reverse the order or decision of the director.]

[(d) An appeal does not stay execution of an order unless the board, on application, grants a stay.]

[(e) Any party may appeal a decision of the board to the Circuit Court under section 2-114.]

Sec. 2. Transition. This Act does not apply to any appeal to the Board

of Appeals that was filed before this Act took effect.

Sec. 3. Regulations. Regulations 6-06AM and 7-06AM remain in effect, notwithstanding any amendment to the County Code in Section 1 of this Act, except for any provision of the National Fire Code that authorizes or refers to an appeal to the Board of Appeals.

Approved:

Philip M. Andrews, President, County Council	Date
--	------

Approved:

Isiah Leggett, County Executive	Date
---------------------------------	------

This is a correct copy of Council action.

Linda M. Lauer, Clerk of the Council	Date
--------------------------------------	------